

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

DR. GEORGE RICHARDSON, ROSALIE §
WEISFELD, AUSTIN JUSTICE §
COALITION, COALITION OF TEXANS §
WITH DISABILITIES, MOVE TEXAS §
CIVIC FUND, LEAGUE OF WOMEN §
VOTERS OF TEXAS, and AMERICAN GI §
FORUM OF TEXAS, INC., §

Plaintiffs

v.

Civil Case No. 5:19-cv-00963

TEXAS SECRETARY OF STATE, TRUDY §
HANCOCK, in her official capacity as §
BRAZOS COUNTY ELECTIONS §
ADMINISTRATOR, and PERLA LARA in §
her official capacity as CITY OF §
MCALLEN, TEXAS SECRETARY, §

Defendants.

JOINT RULE 26(f) CONFERENCE REPORT

On November 5, 2019, counsel for Plaintiffs Dr. George Richardson, Rosalie Weisfeld, Austin Justice Coalition, Coalition of Texans with Disabilities, MOVE Texas Civic Fund, and American GI Forum, and counsel for Defendants Texas Secretary of State, Trudy Hancock, in her official capacity as Brazos County Elections Administrator, and Perla Lara, in her official capacity as City of McAllen Texas, Secretary, conferred by telephone pursuant to Federal Rule of Civil Procedure 26(f). The parties' proposed discovery plan and their positions on the matters listed in Federal Rule of Civil Procedure 26(f)(3) are set forth herein.

Discovery Plan and Trial Date

A. Trial Date

The parties request a trial date of August 3, 2020—273 days from the Rule 16(b)(2) deadline—or as soon thereafter as the Court can accommodate. They anticipate that trial will take approximately three to five days.

B. Discovery Plan

Plaintiffs' proposed discovery plan is as follows:

Exchange of initial disclosures on November 19, 2019.

Amended pleadings due on January 21, 2020.

Mediation to be completed by March 10, 2020.

Close of discovery on April 17, 2020.

Dispositive motion deadline on May 15, 2020.

Plaintiffs' Position: The Plaintiffs respectfully request that the Court issue a scheduling order adopting these deadlines and the deadlines listed in their Proposed Scheduling Order. *See* Ex. A. Plaintiffs propose commencing discovery before a ruling on any Defendant's motion to dismiss and setting specific dates for the scheduling order in order to preserve the court's time, streamline the process, and avoid unnecessary delay.

Defendants Brazos County Elections Administrator and City of McAllen, Texas, Secretary's Position: Defendants Brazos County Elections Administrator and Defendant City of McAllen, Texas, Secretary disagree. Pretrial discovery is costly, time-consuming and intrusive. Unless plaintiffs' allegations state a claim of a violation of clearly established law committed by these defendants, they should be entitled to dismissal before the commencement of discovery. In other words, discovery should not proceed until the district court first finds that the plaintiffs

pleadings assert facts which, if true, would overcome defendants' pending motions to dismiss for failure to state a claim upon which relief can be granted.

Defendant Texas Secretary of State's Position: Defendant Texas Secretary of State believes that discovery is premature until the Court rules on the pending motions to dismiss. Without waiver of this objection and subject to her pending Motion to Dismiss, should this case be allowed to proceed to discovery, Defendant Texas Secretary of State does not presently have any conflicts with the dates in the Proposed Scheduling Order requested by Plaintiffs.

Rule 26(f)(3) Matters

A. Changes to Timing, Form or Requirement of Disclosures Under Rule 26(a)

The parties propose an exchange of initial disclosures pursuant to Rule 26(a) on **November 19, 2019**.

B. Subjects on Which Discovery may be Needed

Defendant Texas Secretary of State's Position: If this case is allowed to proceed to discovery despite Defendants' objections and motions to dismiss, the Texas Secretary of State anticipates seeking discovery regarding the organizational plaintiffs' activities, the individual plaintiffs' casting of ballots in the elections giving rise to their alleged injury, how the challenged provisions are applied by local election authorities, and any other matter relevant to the claims or defenses herein.

Defendant City of McAllen, Texas, Secretary's Position: The City of McAllen, Texas Secretary believes that until plaintiffs have plead a cause of action not subject to a motion to dismiss under Federal Rule 12(b), that discovery should not be permitted.

Defendant Brazos County Elections Administrator's Position: Defendant Brazos County Elections Administrator believes that until plaintiffs have plead a cause of action not subject to a motion to dismiss under Federal Rule 12(b), that discovery should not be permitted.

Plaintiffs' Position: Plaintiffs anticipate seeking discovery regarding each Defendant's activities involving the mail-in ballot process and all other matters related to parties' claims and defenses.

C. Discovery of Electronically Stored Information

Plaintiffs intend to seek discovery of electronically stored information ("ESI") and, therefore, will submit an ESI discovery proposal to Defendants. The parties will confer and attempt to agree upon ESI discovery protocol, including search terms, for filing with the Court.

D. Any issues about claims of privilege or of protection as trial-preparation material.

The parties agree that to the extent a responding party withholds documents from production in response to a discovery request based on a claim of privilege, the withholding party will provide a privilege log consistent with Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure.

E. Changes to Limitations on Discovery

At present, the parties do not anticipate that any changes to the limitations on discovery imposed by the Federal Rules of Civil Procedure will be necessary. Should this change as this case proceeds, the parties agree to confer and attempt to agree on the appropriate nature and scope of any such changes before seeking relief from the Court.

F. Orders the Court Should Issue under Rule 26(c) or Rule 16(b) and (c)

In addition to the ESI agreement referenced above, the parties anticipate requesting that the Court enter a protective order in this matter. The parties anticipate that they will come to an agreement on the scope and terms of the protective order.

Dated: this the 8th day of November, 2019.

Respectfully Submitted,

/s/ Zachary Dolling

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CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record on November 8, 2019 through the Electronic Case File System of the Western District of Texas.

/s/ Zachary Dolling